

DWC - AUDIT UNIT SEMINAR

2002

1. What every adjuster should know about the Audit Unit
2. Listing, by title, of Audit Unit Regulations
3. Benefit Notice Regulation Overview

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PART ONE

I. Audit Process

A. Selection of Audit Subject

1. Random

- a. Labor Code Section 129(a): at least 50% of audit subjects
- b. Random defined: 8CCR§10100.1(y)
- c. Selected by adjusting location from approximately 600 locations

2. Non-Random

- a. Labor Code Section 129(a): up to 50% of audit subjects
- b. Non-Random defined: 8CCR§10100.1(u)
- c. Labor Code Section 129(b): Priorities for non-random audits established through Benefit Notice Program or *other factual information that indicates claims administrator is failing to meet its obligations*:
 - 1) Prior audit results
 - 2) Complaint Tracking and Investigation Process: 8CCR§10106
 - a) Assignment of points to alleged violations
 - b) Investigation
 - c) Recalculation of violation ratio
 - 3) Investigation or Audit may be conducted without calculating points if there is an indication of business practices assessable under LC129.5(d)

B. Pre-Audit

- 1. Annual Report of Inventory (ARI) as required by 8CCR§10104:
 - a. Required of all claims administrators for every adjusting location
 - b. Filed with the Administrative Director by April 1st
- 2. Provision of claim logs to the Audit Unit as required by 8CCR§10107(a):
 - a. Due within 14 days of receipt of Notice of Audit
 - b. Logs to be maintained in compliance with 8CCR§10103.1 for all claims (open and closed) in the preceding calendar year (fiscal year for public self-insured employers)

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3. Administrative penalty exposure:
 - a. Timeliness and accuracy of the ARI cited under 8CCR§10111.1(b)(11); penalty range from \$100 to \$500
 - b. Timeliness and accuracy for maintenance of the claim log cited under 8CCR§10111.1(b)(1); penalty range from \$25 to \$500

B. File Review

1. A list of randomly selected files is provided to the administrator with the Notice of Audit Commencement: - all files selected for audit shall be provided in accordance with 8CCR§10107(g)
2. Auditor's Recommended Assessments and Proposed Mitigation:
 - a. Administrator's response - agree, disagree, discuss
 - 1) Recommend daily response
 - 2) Critical for analysis of short indemnity sample
 - b. Response to Preliminary Findings
 - 1) To violations cited in the Preliminary Notice of Penalty Assessments
 - 2) To Notice(s) of Intention to Issue a Notice of Compensation Due
 - a) Objection due within 14 days of receipt of report as required by 8CCR§10110(b)
 - b) Objection required by WCAB for later appeal to Notice of Compensation Due
3. Administrative penalty exposure:
 - a. Accuracy for listing of type of claim file on the claim log cited under 8CCR§10111.1(b)(1); penalty range from \$25 to \$100
 - b. Provision of the claim file cited under 8CCR§10111.1(d)(5); penalty range from \$100 to \$5,000

C. Post Audit

1. Response to Final Audit Findings issued in accordance with 8CCR§10107(m):
 - a. Notice of Penalty Assessments - payment due within 15 days of receipt as required by LC§129.5(c)
 - b. Notice of Compensation Due - payment due within 30 days of receipt as required by LC§129(c)
 - c. Compliance for requested documentation - due within 30 days of receipt of report as required by 8CCR§10107(m)

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2. Appeal of Final Audit Findings

a. Notice of Penalty Assessments

- 1) Notice of appeal and request for conference or written decision without a conference must be filed with the Administrative Director within 7 days of receipt as required by 8CCR§10115.1(a)
- 2) A listing of appealed assessments and supporting documentation or other evidence must be submitted to the Administrative Director within 21 days after filing the notice of appeal as required by 8CCR§10115.1(d)
- 3) Two copies of any appeal documents must be filed concurrently with the Audit Unit as required by 8CCR10115.1(h)

b. Notice of Compensation Due must be appealed as required by 8CCR§10115

- 1) Request for further review must be filed with the WCAB within 15 days of receipt
- 2) Copies of the appeal must be served on all parties to the Notice and the Administrative Director

c. Petition for a writ of mandate from the Administrative Director's Notice of Findings must be filed within 30 days after receipt as required by LC§129.5(e) and 8CCR§10115.2(l)

3. Administrative penalty exposure:

- a. Timeliness of payment of any uncontested penalty assessment in the Notice of Penalty Assessments cited under 8CCR§10111.1(b)(10); penalty range from \$100 to \$500
- b. Each failure to pay compensation as ordered in a Notice of Compensation Due cited under 8CCR§10111.1(c)(1); penalty range from \$250 to \$1,000
- c. Failure to comply with any written request or order of the Administrative Director or Audit Unit within 30 days of receipt cited under 8CCR§10111.1(d)(2); penalty range \$500 to \$5,000

D. Civil Penalty

1. Labor Code Section 129.5(d) "In addition to the penalty assessment permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing

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that an employer, insurer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:

- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

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PART TWO

II. Audit Process - Documentation & Investigation

A. File Composition

1. Content (8CCR§10101.1)

- a. Employee's Claim for Workers' Compensation Benefits (DWC Form 1)
- b. Employer's Report of Injury (Form 5020)
- c. All reports sent to the Division of Workers' Compensation
- d. Doctor's Report of Occupational Injury (Form 5021)
- e. All medical reports pertaining to claim
- f. All orders &/or awards of WCAB or the Rehabilitation Unit
- g. Record of payment of compensation benefits as defined by 8CCR§10100.1(z)
- h. Copy of the Application(s) for Adjudication filed with the WCAB, if any
- i. Copies of notices sent to injured worker, including rehabilitation notices and QME advice
- j. Documentation of Earnings as required by 8CCR§10101.1(j)
- k. Notes and documentation related to the provision, delay, or denial of benefits, including any electronically stored information.
- l. Notes and documentation evidencing the legal, factual, or medical basis for non-payment or delay in payment of compensation benefits or expenses.
- m. Notes describing telephone conversations relating to the claim which are of significance to claims handling, including the dates of calls, substance of calls, and identification of parties to the calls.

2. Administrative penalty cited under 8CCR§10111.1(a)(7)(i), (v) and/or (vi) for missing file content with specific reference noted to 8CCR§10101.1; assessed at \$100 for each missing item.

B. Investigation

1. LC§5402: "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury *sufficient*

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to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400...." (emphasis added)

2. **Ramirez vs. WCAB (35 CCC 383):** "....Upon notice or knowledge of a claimed industrial injury an employer has both the right and duty to investigate the facts in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he take the initiative in providing benefits."
3. **8CCR§10109: Duty to Conduct Investigation; Duty of Good Faith.**
 - a. To comply with the time requirements of the Labor Code and the Administrative Director's regulations, a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a worker's compensation benefit.
 - b. A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
 - 1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment. The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.
 - 2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.
 - c. The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.
 - d. The claims administrator must document in its claim file the investigatory acts undertaken and the information obtained as a result of the investigation.
 - e. Insurers, self-insured employers and third-party administrators shall deal

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fairly and in good faith with all claimants, including lien claimants.

4. Administrative penalty cited under 8CCR§10111.1(c)(6) for failure to investigate; penalty range from \$250 to \$1,000.

C. Denials

1. Factors / Regulations relevant to denial of all liability for a claim.
 - a. 8CCR§10108(g): "Failure, delay, or refusal to pay compensation benefits or expenses shall be subject to the applicable penalties under §10111 or §10111.1 unless the legal, factual, or medical basis for the failure, refusal or delay is documented in the claim file."
 - b. 8CCR§10116.1: "Nothing in this article shall abrogate the duty of an employer to provide timely compensation to an injured worker, even if the employee has not completed and filed the form required by Labor Code Section 5401 and this article."
 - c. 8CCR§10111.1: "...In order to avoid a penalty, the denial must state a legal, factual or medical basis recognized by applicable law and documented by information in the claim file. An employee's purported waiver of benefits in a compensable case is not a ground to deny liability...."
 - d. 8CCR§10108(e): "Penalties will not be assessed for an act or omission where an injured worker's unreasonable refusal to cooperate in the investigation has prevented the claims administrator from determining its legal obligation to perform the act."
2. Examples of unsupported denials:
 - a. A claim is denied because of the employer's belief that an employee is lying about an alleged injury, yet no evidence of the injury occurring other than as alleged is presented.
 - b. A claim is denied because there are no witnesses to an injury, even though there is no "good faith" reason to dispute the injury as claimed.
 - c. A claim is denied based on inadequate investigation - for instance, a claim for injuries sustained in an auto accident is denied based on the going and coming rule, while evidence in the file indicates that an exception to the rule, a special errand, was actually involved.
 - d. A claim is denied because of a pre-existing condition, but evidence of

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- industrial aggravation of the pre-existing condition is not rebutted - for instance, a back injury is denied because of an employee's history of back problems, yet unrebutted medical records or reports indicate that the injury in question caused a new need for treatment and/or disability.
- e. A claim is denied because of a general belief that certain types of conditions are not industrially caused - for instance, the employee's physician reports that the employee contracted pneumonia while working in a food freezer. The administrator, without obtaining a medical report to rebut the treating physician's findings, denies the claim, stating that pneumonia is not an industrially caused condition.
 - f. A claim is denied because of the conjecture that an incident could not cause an injury - for instance, a back injury requiring surgery is denied because the employer believes that the mere lifting of a two-pound weight could not cause such an injury.
 - g. A post-termination claim is denied without an attempt from the administrator to obtain the employee's medical records [see LC§3600(a)(10)].
 - h. A claim is denied because of a low reading of an injury-causing agent without medical rebuttal of a physician's report - for instance, a claim for bronchitis aggravated by dust exposure is denied because of an industrial hygienist's report showing low dust level readings, yet the administrator does not obtain a medical report to rebut the treating physician's findings that the dust exposure, as low as it may be, caused injury to the employee as alleged.
 - i. A claim for a clearly compensable injury is denied because the employee has not submitted a claim form (see 8CCR§10116.1), or because the employee "withdrew" his or her claim [see 8CCR§10111.1(d)(1)].
 - j. A psychiatric claim is denied under LC§3208.3 because the treating physician's report indicating industrial causation is not written to meet DSM IV-R standards.
3. Administrative penalty cited under 8CCR§10111.1(d)(1) for denial of all liability without documentation of a medical, legal or factual basis for the denial; penalty range from \$3,500 to \$5,000.

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PART THREE

III. Audit Process - Benefit Provision

A. Wage Statement Analysis

1. Required documentation

a. 8CCR§10101.1(j) -: "Documentation sufficient to determine the injured worker's average weekly earnings in accordance with Labor Code Sections 4453 through 4459. Unless the claims administrator accepts liability to pay the maximum temporary disability rate, including any increased maximum due under Labor Code §4661.5, the information shall include:

- 1) Documentation whether the employee received the following earnings, and if so, the amount or fair market value of each: tips, commissions, bonuses, overtime, and the market value of board, lodging, fuel, or other advantages as part of the worker's remuneration, which can be estimated in money, said documentation to include the period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay;
- 2) Documentation of concurrent earnings from employment other than that in which the injury occurred, or that there were no concurrent earnings, or of reasonable attempts to determine this information;
- 3) If earnings at the time of injury were irregular, documentation of earnings from all sources of employment for one year prior to the injury, or of reasonable attempts to determine this information.
- 4) If the foregoing information results in less than maximum earnings, documentation of the worker's earning capacity, including documentation of any increase in earnings likely to have occurred but for the injury (such as periodic salary increases or increased earnings upon completion of training status), or of reasonable attempts to determine this information."
 - a) "Going Rate" (Montana Decision)
 - b) Grossmont Hospital Decision

2. Calculation of average weekly wage / indemnity rate(s) LC§4653: "If the injury

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causes temporary total disability, the disability payment is two-thirds of the average weekly earnings during the period of such disability, consideration being given to the ability of the injured employee to compete in an open labor market."

3. Administrative penalty cited under 8CCR§10111.1(a)(5) for denial of all liability without documentation of a medical, legal or factual basis for the denial; penalty range from \$3,500 to \$5,000.

B. Temporary Disability Indemnity

1. Benefit Notice(s) as required by 8CCR§9812:
 - a. §9812(a)(2) and (j) Delay of TD or all workers' compensation benefits and subsequent delay of TD or all benefits.
 - b. §9812(a)(3) and (i) - Denial of TD or all workers' compensation benefits.
 - c. §9812(a)(1) First payment of TD or Salary Continuation.
 - d. §9812(b) Resumption of TD, Salary Continuation, PD, VRMA payments
 - e. §9812(c) Change of rate or schedule of TD, Salary Continuation, PD, VRMA
 - f. §9812(d) Termination of TD, Salary Continuation, PD, VRMA payments
2. Payments
 - a. First payment of temporary disability indemnity LC§4650(a): "If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied."
 - 1) Due not later than 14 days after *employer's* knowledge of the injury and disability....
 - a) Insurance Code §11652: "Every such contract or policy shall contain a clause to the effect that, as between the employee and the insurer, notice to or knowledge of the occurrence of the injury on the part of the employer will be deemed notice or knowledge, as the case may be, on the part of the insurer."
 - b) LC§5402: "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or

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knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400...."

- c) 8CCR§10100.1(l): "Date of Knowledge of Injury and Disability. The date the employer had knowledge or reasonably can be expected to have had knowledge of (1) a worker's injury or claim for injury, and (2) the worker's inability or claimed inability to work because of the injury."
- 2) On which date all indemnity then due shall be paid...
 - a) Through the date of the check or the date immediately preceding the check.
 - b) The date of the check must be within 14 days after the employer's date of knowledge of injury and disability.
- b. Subsequent payment of temporary disability indemnity - LC§4650(c):
Payment of temporary or permanent disability indemnity subsequent to the first payment shall be as due every two weeks on the day designated with the first payment.
 - 1) Meaning of "as due"
 - a) As due = All indemnity then due (As in LC§4650[a])
 - b) As due = On the day designated with the first payment
 - c) As due = Every two weeks
 - 2) Exceptions
 - a) Holidays on check due-dates - 8CCR§10108(a)
 - b) Notice sent that payments were terminated
 - c) LC§4661.5 - payment two years post date of injury
 - d) Indemnity rate adjustment
 - 3) Schedule applicable to all indemnity paid (TD, SC, PD, VR, DB)
- 3. Administrative penalty exposure:
 - a. Notices cited under 8CCR§10111.1(a)(7)(ii), (iii) and/or (iv) for missing, late and/or inaccurate notices; penalty range from \$25 to \$100
 - b. Temporary disability payments cited under 8CCR§10111.1(a)(6); (a)(12), (a)(13); (c)(3); (d)(4) for late payments or failure to pay as due or in accordance with an Award or Order of the WCAB; penalty range from \$25

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to \$5,000

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PART FOUR

IV. Audit Process - Benefit Provision

C. Permanent Disability Indemnity

1. Benefit Notice(s) as required by 8CCR§9812:
 - a. §9812(e) Dates of injury prior to 1/1/91;
 - b. §9812(f) Dates of injury between 1/1/91 and 12/31/93 (window period);
 - c. §9812(g) Dates of injury 1/1/94 and after:
 - 1) §9812(g)(1) Monitoring PD, not P&S, may have PD and subsequent notice monitoring PD
 - 2) §9812(g)(2) Injury becomes permanent and stationary, causes PD
 - 3) §9812(g)(3) No PD exists
 - 4) §9812(g)(4) Permanent disability indemnity payments
2. Payments
 - a. First payment of permanent disability indemnity - LC§4650(b): "If the injury causes permanent disability, the first payment shall be made within 14 days after the date of the last payment of temporary disability indemnity. Where the extent of permanent disability cannot be determined at the date of last payment of temporary disability indemnity, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined until that amount has been paid."
 - 1) LC§4650(b): "...within 14 days after the last payment of temporary disability indemnity...."
 - 2) (If no lost time) 8CCR§9812(g)(4): "...or within 14 days after knowledge that the employee's injury has resulted in permanent disability, whichever is later."
 - 3) PD begins accumulating:
 - a) Since LC§4650(b) says first payment is due 14 days after last payment of TD, and since there is no longer a statutory waiting

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period, PD begins accumulating the day after last day of TD.

- b) If there is no lost time, the latest reasonable date that PD could begin to accumulate is the day after the employee's injury becomes P&S.

- 4) LC§4650(b): "...continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined until that amount has been paid."

3. Administrative penalty exposure:

- a. Notices cited under 8CCR§10111.1(a)(7)(ii), (iii) and/or (iv) for missing, late and/or inaccurate notices; penalty range from \$25 to \$100
- b. Permanent disability payments cited under 8CCR§10111.1(a)(2); (a)(6), (a)(13); (c)(4); (d)(4) for late payments or failure to pay as due or in accordance with an Award or Order of the WCAB; penalty range from \$25 to \$5,000

- D. Self-Imposed Increase LC§4650(d): "If any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee, unless the employer continues the employee's wages under a salary continuation plan, as defined in subdivision (g). No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the employer under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the employer is unable to determine whether temporary disability indemnity are owed and advises the employee, in the manner prescribed in rules and regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability indemnity payments are owed, and when the employer expects to have the information required to make the decision."

- 1. Filing Date LC§5401(c): "The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650....For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail."

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2. Two-step process to determine if self-imposed increase is due
 - a. Determine if payment is late
 - 1) First payment due 14 days after employer's date of knowledge of injury and disability, and due each 14th day thereafter until first payment is made
 - 2) Subsequent payment due every two weeks on the day designated with the first payment
 - b. Determine if the payment was due within 14 calendar days after the claim form was filed
 - 1) If so, the payment is not subject to self-imposed increase.
 - 2) If not, the self-imposed increase is 10% of the amount due on the date the payment was due (excluding any indemnity due prior to or within 14 days after the filing of the claim form).
3. Indemnity not subject to self-imposed increase
 - a. Salary Continuation - LC§4650(g): "For purposes of this section, 'salary continuation plan' means a plan which meets both of the following requirements:
 - 1) The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy.
 - 2) The plan provides the employee on his or her regular payday with salary not less than the employee is entitled to receive pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy and not less than the employee would otherwise receive in indemnity payments."
 - b. *Timely* delay notice - LC§4650(d): "...No increase shall apply when, *within the 14-day period* specified under subdivision (a), the employer...advises the employee...why payments cannot be made within the 14-day period...."
 - c. VRMA, including TD as VRMA
 - d. Death Benefits
3. Administrative penalty cited under 8CCR§10111.1(a)(1) for failure to pay or late paid SII; penalty range from \$25 to \$100.

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E. Vocational Rehabilitation Maintenance Allowance

- 1. Benefit Notice(s) as required by 8CCR§9813:**
 - a. §9813(a)(1) First payment of Vocational Rehabilitation Maintenance Allowance (VRMA)**
 - b. §9813(a)(2) Delay in providing vocational rehabilitation**
 - c. §9813(a)(3) Denial of vocational rehabilitation benefits**
 - d. §9813(a)(4) Interruption or Deferral of vocational rehabilitation services and subsequent interruption or deferral.**
 - e. §9813(b) Dates of injury prior to 1990**
 - f. §9813(c) Dates of injury 1990 through 1993**
 - g. §9813(d) Dates of injury 1/1/94 and after**
 - 1) §9813(d)(1) 90 days aggregate TTD**
 - 2) §9813(d)(2) Notice of Potential Eligibility**
 - 3) §9813(d)(3) Reminder of Potential Eligibility**
 - 4) §9813(d)(4) Intention to Withhold VRMA for failure to cooperate**
- 2. Payments**
 - a. LC§139.5(d) provides statutory requirements for calculation and provision of VRMA**
 - 1) Maximum rate payable \$246 per week**
 - 2) Employee may be eligible to supplement VRMA with permanent disability indemnity up to his/her TD rate**
 - 3) VRMA for period(s) of delay of VR services may be payable at TD rate and not be counted as part of maximum expenditure for VR services**
 - b. Payment of VRMA subsequent to the first payment shall be as due every two weeks on the day designated with the first payment as required by 8CCR§10125.1(a)**
- 3. Administrative penalty exposure:**
 - a. Notices cited under 8CCR§10111.1(a)(7)(ii), (iii), (iv) and/or (vi), and 8CCR§10111.1(b)(3), (4), (5) for missing, late and/or inaccurate notices; penalty range from \$25 to \$500**
 - b. Temporary disability payments cited under 8CCR§10111.1(a)(6); (a)(13); (a)(14); (c)(3); (d)(4) for late payments or failure to pay as due or in accordance with an Award or Order of the WCAB or Rehabilitation Unit;**

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penalty range from \$25 to \$5,000

Inquiries may be directed to any of the Audit Unit offices:

- 1. 1661 North Raymond, Suite #201
Anaheim, CA 92801-1162**
- 2. 1515 Clay Street, 6th Floor
Oakland, CA 94612-1401**
- 3. 2424 Arden Way, Suite #305
Sacramento, CA 95825-2403**
- 4. 455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102-3660**
- 5. 6150 Van Nuys Boulevard, Suite #200
Van Nuys, CA 91401-3373**

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Calendar Year 1999

Frequency of Assessments In Randomly Selected Audited Files

Statewide Summary For All Audit Subjects

ITEM NO.	VIOLATIONS RELATED TO:	# OF AUDITED FILES WITH EXPOSURE FOR ASSESSMENTS	# OF AUDITED FILES WITH ASSESSMENTS	% OF FILES WITH ASSESSMENTS
1	LATE FIRST PAY OF TD	1,424	431	30.27%
2	LATE FIRST PAY OF PD	504	136	26.98%
3	LATE FIRST PAY OF VRMA	176	26	14.77%
4	LATE SUBSEQ INDEM. PAY	1,076	355	32.99%
5	LATE PAY OF DEATH BENEFITS	7	0	0.00%
6	FAIL TO ISSUE BEN. NOTICES (INDEM.,DELAY)	2,415	739	30.60%
7	LATE BEN. NOTICES (INDEM.,DELAY)	2,386	623	26.11%
8	FAIL TO PAY OR OBJECT TO MED. EXPENSES W/IN 60 DAYS	1,283	239	18.63%
9	FAIL TO PAY OR OBJECT TO M/L EXPENSES W/IN 60 DAYS	813	103	12.67%
10	FAIL TO PAY OR OBJECT TO VR EXPENSES W/IN 60 DAYS	239	18	7.53%
11	FAIL TO ASSIGN QRR AFTER 90 DAYS OF TD	2	0	0.00%
12	FAIL TO ISSUE NOTICE OF VR RIGHTS AFTER 90 DAYS OF TD	443	245	55.30%
13	FAIL TO NOTIFY EMPLOYEE OF MED ELIG. FOR VR AS REQ.	325	156	48.00%
14	FAIL TO NOTIFY EMPLOYEE OF NON-ELIG. FOR VR AS REQ.	133	36	27.07%
15	FAIL TO NOTIFY EMPLOYEE OF PROCEDURE TO EVAL. PD	1,358	334	24.59%
16	FAIL TO ISSUE DENIAL NOTICE AS REQ.	1,294	22	1.70%
17	FAIL TO RESPOND TIMELY TO MED. TRTMNT REQUEST	N.A.	4	N.A.
18	UNPAID INDEMNITY	1,834	431	23.50%
19	CLAIM LOG VIOL. (# OF ENTRIES AND VIOL.)	114,283	124	0.11%
20	OTHER ASSESSMENTS	5,432	671	12.35%
21	UNSUPPORTED DENIALS	1,257	7	0.56%

Calendar Year 2000

**Frequency of Assessments
In Randomly Selected Audited Files**

**Statewide Summary
All Audit Subjects**

Item No.	Violations Related To:	# Of Audited Files With Exposure For Assessments	# Of Audited Files With Assessments	% Of Files With Assessments
1	Late First Pay Of TD	1,968	470	23.88%
2	Late First Pay Of PD	809	179	22.13%
3	Late First Pay Of VRMA	270	27	10.00%
4	Late Subsequent Indemnity Pay	1,599	462	28.89%
5	Late Pay Of Death Benefits	3	0	0.00%
6	Fail To Issue Ben. Notices (Indem.,Delay)	3,384	802	23.70%
7	Late Ben. Notices (Indem.,Delay)	3,349	837	24.99%
8	Fail To Pay or Object To Med. Expenses w/in 60 Days	1,873	244	13.03%
9	Fail To Pay or Object To M/L Expenses w/in 60 Days	1,107	76	6.87%
10	Fail To Pay or Object To VR Expenses w/in 60 Days	350	13	3.71%
11	Fail To Assign QRR After 90 Days of TD	1	0	0.00%
12	Fail To Issue Notice of VR Rights After 90 Days of TD	696	327	46.98%
13	Fail To Notify Employee of Med. Elig. for VR as Req.	503	236	46.92%
14	Fail To Notify Employee of Non-Elig. for VR as Req.	141	40	28.37%
15	Fail To Notify Employee of Procedure to Eval. PD	2,047	422	20.62%
16	Fail To Issue Denial Notice as Req.	2,076	29	1.40%
17	Fail To Respond Timely To Med. Treatment Request	N.A.	2	N.A.
18	Unpaid Indemnity	2,755	503	18.26%
19	Claim Log Violations (# of Entries and Violations)	168,292	178	0.11%
20	Other Assessments	8,359	1,001	11.98%
21	Unsupported Denials	2,052	14	0.68%

Calendar Year 2000**Frequency of Assessments
In Randomly Selected Audited Files****Statewide Summary
All Randomly Selected Audit Subjects**

Item No.	Violations Related To:	# Of Audited Files With Exposure For Assessments	# Of Audited Files With Assessments	% Of Files With Assessments
1	Late First Pay Of TD	1,546	334	21.60%
2	Late First Pay Of PD	651	134	20.58%
3	Late First Pay Of VRMA	203	21	10.34%
4	Late Subsequent Indemnity Pay	1,283	310	24.16%
5	Late Pay Of Death Benefits	3	0	0.00%
6	Fail To Issue Ben. Notices (Indem.,Delay)	2,753	591	21.47%
7	Late Ben. Notices (Indem.,Delay)	2,734	613	22.42%
8	Fail To Pay or Object To Med. Expenses w/in 60 Days	1,529	164	10.73%
9	Fail To Pay or Object To M/L Expenses w/in 60 Days	888	54	6.08%
10	Fail To Pay or Object To VR Expenses w/in 60 Days	267	9	3.37%
11	Fail To Assign QRR After 90 Days of TD	1	0	0.00%
12	Fail To Issue Notice of VR Rights After 90 Days of TD	544	241	44.30%
13	Fail To Notify Employee of Med. Elig. for VR as Req.	375	163	43.47%
14	Fail To Notify Employee of Non-Elig. for VR as Req.	116	28	24.14%
15	Fail To Notify Employee of Procedure to Eval. PD	1,638	294	17.95%
16	Fail To Issue Denial Notice as Req.	1,818	20	1.10%
17	Fail To Respond Timely To Med. Treatment Request	N.A.	1	N.A.
18	Unpaid Indemnity	2,229	346	15.52%
19	Claim Log Violations (# of Entries and Violations)	143,491	132	0.09%
20	Other Assessments	6,869	778	11.33%
21	Unsupported Denials	1,795	11	0.61%

Calendar Year 2000

**Frequency of Assessments
In Randomly Selected Audited Files**

**Statewide Summary
All Non-randomly Selected Audit Subjects**

Item No.	Violations Related To:	# Of Audited Files With Exposure For Assessments	# Of Audited Files With Assessments	% Of Files With Assessments
1	Late First Pay Of TD	422	136	32.23%
2	Late First Pay Of PD	158	45	28.48%
3	Late First Pay Of VRMA	67	6	8.96%
4	Late Subsequent Indemnity Pay	316	152	48.10%
5	Late Pay Of Death Benefits	0	0	0.00%
6	Fail To Issue Ben. Notices (Indem.,Delay)	631	211	33.44%
7	Late Ben. Notices (Indem.,Delay)	615	224	36.42%
8	Fail To Pay or Object To Med. Expenses w/in 60 Days	344	80	23.26%
9	Fail To Pay or Object To M/L Expenses w/in 60 Days	219	22	10.05%
10	Fail To Pay or Object To VR Expenses w/in 60 Days	83	4	4.82%
11	Fail To Assign QRR After 90 Days of TD	0	0	0.00%
12	Fail To Issue Notice of VR Rights After 90 Days of TD	152	86	56.58%
13	Fail To Notify Employee of Med. Elig. for VR as Req.	128	73	57.03%
14	Fail To Notify Employee of Non-Elig. for VR as Req.	25	12	48.00%
15	Fail To Notify Employee of Procedure to Eval. PD	409	128	31.30%
16	Fail To Issue Denial Notice as Req.	258	9	3.49%
17	Fail To Respond Timely To Med. Treatment Request	N.A.	1	N.A.
18	Unpaid Indemnity	526	157	29.85%
19	Claim Log Violations (# of Entries and Violations)	24,801	46	0.19%
20	Other Assessments	1,490	223	14.97%
21	Unsupported Denials	257	3	1.17%

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SUBCHAPTER 1.5
INJURIES ON OR AFTER JANUARY 1, 1990

ARTICLE 1
Audits, General Definitions

- §10100. DEFINITIONS - PRIOR TO JANUARY 1, 1994.**
§10100.1. DEFINITIONS - ON OR AFTER JANUARY 1, 1994.

ARTICLE 2
Claims Administration and Record Keeping

- §10101. CLAIM FILE - CONTENTS.**
§10101.1. CLAIM FILE - CONTENTS.
§10102. RETENTION OF CLAIM FILES.
§10103. CLAIM LOG - CONTENTS AND MAINTENANCE.
§10103.1. CLAIM LOG - CONTENTS AND MAINTENANCE.
§10104. ANNUAL REPORT OF INVENTORY.

ARTICLE 3
Auditing

- §10105. AUDITING, DISCRETION OF THE ADMINISTRATIVE DIRECTOR.**
**§10106. RANDOM AND NON-RANDOM AUDIT SUBJECT SELECTION;
COMPLAINT / INFORMATION INVESTIGATION.**
§10106.5. CIVIL PENALTY INVESTIGATION.
**§10107. NOTICE OF AUDIT; CLAIM FILE SELECTION; PRODUCTION OF
CLAIM FILES; AUDITING PROCEDURE.**
§10108. AUDIT VIOLATIONS - GENERAL RULES.
§10109. DUTY TO CONDUCT INVESTIGATION; DUTY OF GOOD FAITH.

ARTICLE 4
Notices of Compensation Due

- §10110. NOTICE OF INTENTION TO ISSUE A NOTICE OF
COMPENSATION DUE; NOTICE OF COMPENSATION DUE;
REVIEW BY WORKERS' COMPENSATION APPEALS BOARD.**

ARTICLE 5

Administrative Penalties

**§10111. SCHEDULE OF ADMINISTRATIVE PENALTIES FOR INJURIES
ON OR AFTER JANUARY 1, 1990, BUT BEFORE JANUARY 1, 1994.**

**§10111.1 SCHEDULE OF ADMINISTRATIVE PENALTIES FOR INJURIES
ON OR AFTER JANUARY 1, 1994:**

<p>(a) penalties up to \$100</p> <ul style="list-style-type: none"> (1) late or unpaid SII* (2) late 1st PD* (3) response to request reimbursement for self-procured medical tx (4) payment of travel expense <ul style="list-style-type: none"> • w/ notice of C/A scheduled exam • w/in 14 days of AD or WCAB scheduled exam • w/in 60 of IW request (5) documentation for indemnity rate (6) late scheduled indemnity payments* (7) compliance for unspecified regs <ul style="list-style-type: none"> [i] provision of DWC-1 [ii] missing benefit notice [iii] late benefit notice* [iv] inaccurate benefit notice [v] file contents [vi] all other regs... (8) medical-legal expense (9) unpaid medical treatment expense (10) late paid medical tx expense (11) VR expense (12) late 1st TD* (13) failure to pay all indemnity due/balance paid later* (14) late 1st VRMA or DB* 	<p>(b) penalties up to \$500</p> <ul style="list-style-type: none"> (1) maintenance / provision of claim log (2) 90-day VR advice (post 1993 DOI) w/ FEHA & ADA (3) Notice of Potential Eligibility for VR (4) enclosure of medical report w/ VR denial notice (5) VR denial notice (6) PD advice; notice of QME/AME procedures (7) notice of denial of death benefit (8) notice of denial of all liability (9) materially misleading notice of denial of all liability (10) non-payment of uncontested AP on Notice of Penalty Assessments (11) timeliness and accuracy of Annual Report of Inventory <p>(c) penalties up to \$1,000</p> <ul style="list-style-type: none"> (1) payment of Notice of Compensation Due (2) VR termination, interruption, deferral (3) unpaid TD, VR, SC (4) unpaid PD (5) unpaid DB (6) failure to investigate (8CCR§10109)
<p>(d) penalties up to \$5,000</p> <ul style="list-style-type: none"> (1) unsupported denial of all liability (2) compliance w/ request or order of AD or Audit Unit (3) failure to provide DWC-1 upon request (4) compliance w/ award or order of the WCAB or Rehab Unit (5) failure to produce legible file copy (6) backdating or fraudulent alteration of documents 	<p>(e) modification of penalties</p> <ul style="list-style-type: none"> (1) for gravity (2) good faith (3) frequency (4) history (5) no penalties based on overall performance (6) extraordinary circumstances <p>NOTE: *AP subject to exacerbation under 8CCR§10108(c) if action over 30 days late</p>

§10112. LIABILITY FOR PENALTY ASSESSMENTS.

ARTICLE 6
Civil Penalty

§10113. ORDER TO SHOW CAUSE RE: ASSESSMENT OF CIVIL PENALTY AND NOTICE OF HEARING.

§10114. HEARING AND DETERMINATION.


ARTICLE 7
Appeals

§10115. APPEAL OF NOTICE OF COMPENSATION DUE.

§10115.1. APPEAL OF NOTICE OF PENALTY ASSESSMENT - FILING AND CONTENTS.

§10115.2. APPEAL OF NOTICE OF PENALTY ASSESSMENT; CONFERENCE PROCESS AND DELEGATION OF AUTHORITY; NOTICE OF FINDINGS, SERVICE.

§10115.3. APPEAL OF CIVIL PENALTY.



BENEFIT NOTICE

REGULATION

OVERVIEW

TITLE 8 CCR §9810 - §9815

Benefit Notice Regulation - Outline

Benefit Notice Requirements



BENEFIT NOTICE REGULATION OVERVIEW

SECTION 9810	GENERAL PROVISIONS
SECTION 9811	DEFINITIONS
SECTION 9812	BENEFIT PAYMENT AND NOTICE
	<ul style="list-style-type: none">• 14 days <u>after</u> employer's knowledge• employer's knowledge includes administrator's and defense representatives- whichever is <u>first</u>
DELAY § 9812 (A)(2) AND (J)	TD or ALL workers' compensation benefits <ul style="list-style-type: none">• partial or full delay of benefits• reason(s) for delay• date of expected determination SUBSEQUENT-> <ul style="list-style-type: none">• 5 days after previous determination date• reason(s) for continued delay• date of expected determination• employee's remedies Note: 14 days after receipt of information -> pay/deny
DENY § 9812 (A)(3) AND (I)	TD or ALL workers' compensation benefits <ul style="list-style-type: none">• reason(s) for denial --> NO JARGON <--• employee's remedies
PAY TD BENEFITS § 9812 (A)(1)	FIRST TD <ul style="list-style-type: none">• amount, how calculated, duration, and schedule• schedule: day designated with the first payment• may include TD Fact Sheet
RESUME BENEFITS § 9812 (B)	TD, SC, PD, VRTD/VRMA <ul style="list-style-type: none">• amount, duration, schedule• 14 days after knowledge of entitlement

BENEFIT NOTICE REGULATION OVERVIEW

CHANGE RATE OR SCHEDULE § 9812 (C)	TD, SC, PD, VRTD/VRMA <ul style="list-style-type: none">• due prior to or with the change - must be prior to the old scheduled payment date• amount, reason, new schedule• may use for change to wage loss (TPD) with explanation of formula for calculation.
END BENEFITS § 9812 (D)	TD, SC, PD, VRTD/VRMA <ul style="list-style-type: none">• issue <u>with</u> last payment• reason for ending benefit• full accounting of periods / amounts / penalties• employee's remedies• <u>may</u> include overpayment information <p>Note: <u>At the same time TD benefits end</u>, the notice must provide PD advice including the mandatory language of LC § 4061.</p>

SECTION 9812 (E)	PERMANENT DISABILITY - DOI prior to 1/1/91 <ul style="list-style-type: none">• within 14 days after knowledge or last payment of TD ... pay, delay, deny.
SECTION 9812 (F)	PERMANENT DISABILITY - DOI 1/1/91 - 12/31/93 "WINDOW PERIOD" <ul style="list-style-type: none">• When P&S, provide PD/AME/QME information within --> 5 <-- days after knowledge
SECTION 9812 (G)	PERMANENT DISABILITY - DOI 1/1/94 AND AFTER

ALL PD NOTICES REQUIRE THE MANDATORY LANGUAGE OF LC §4061

BENEFIT NOTICE REGULATION OVERVIEW

PD – DELAY / MONITOR (G)(1)

Not P&S, may cause PD

- together with the last payment of TD
- reason for delay
- provide expected date of determination
- within 5 days after previous determination date
- reason(s) for further delay
- provide expected date of determination
- employee's remedies

Note: 14 days after receipt of information pay / deny

SUBSEQUENT->

PD - P&S (G)(2)

With PD

- with the last payment of TD or
 - within 14 days after determination PD payable
- Advise employee:
- amount of PD payable
 - basis for determination
 - advice regarding continued medical care
 - available remedies including AME / QME and DEU / I&A options.

PD - DENY (G)(3)

Without PD

- with the last payment of TD or
 - within 14 days after determination PD not payable
- Advise employee:
- no PD payable
 - employee's remedies
 - other available remedies including AME / QME and DEU / I&A options.

Note: When using DWC recommended notice format you **must** include the PD Fact Sheet

PD - PAY (G)(4)

PD payments whether or not extent of PD is known, whether or not the injury is P&S.

- within 14 days after termination of TD or within 14 days after knowledge that PD is payable
- "knowledge" includes the employer, claims administrator, and representative of claims administrator.

Advise the employee

- amount, how calculated, duration, and schedule
- amount of "reasonable estimate" of PD to be paid

BENEFIT NOTICE REGULATION OVERVIEW

SECTION 9812	DEATH BENEFIT NOTICES
(H)(1); (H)(3)	• benefit payment or delay of benefit
(H)(2)	• benefit change
(H)(4)	• benefit denial

SECTION 9813	VOCATIONAL REHABILITATION NOTICES
VR - PAY (A)(1)	Notice of first payment of VRMA <ul style="list-style-type: none">• 14 days <u>after</u> employee's request for VR• employee must be P&S and QIW Advise employee: <ul style="list-style-type: none">• amount, how calculated, duration, schedule• advise of PD supplement option
VR - DELAY (A)(2)	Upon receipt of medical report of possible QIW <u>or</u> request for VR, when administrator cannot determine entitlement to benefits. <ul style="list-style-type: none">• within 10 days of receipt of medical report or request• reason(s) for delay• date of expected determination• VRMA at TD rate - LC § 139.5 & §10125.1(c)
SUBSEQUENT ->	<ul style="list-style-type: none">• within 5 days after previous determination date• reason(s) for further delay• expected date of determination• employee's remedies (to Rehab. Unit)

Note: After information receipt --> deny within 10 days; pay within 14 days

BENEFIT NOTICE REGULATION OVERVIEW

VR - DENY

(A)(3)

When administrator has determined the employee is not a qualified injured worker (QIW).

- within 10 days after receipt of request for VR services, treating physician's final report that employee is not QIW (post 90 days TTD), or within 10 days of receipt of other information.

Advise employee

- reason for denial and employee's remedies
- enclose a copy of the document in which the determination is based
- enclose an RU 101 and RU 103

VR - INTERRUPT OR DEFER

(A)(4)

- within 10 days after receipt of agreement to interrupt or defer
- within 10 days after agreement to extend the interruption or deferral.
- include VR reinstatement request form

SECTION 9813 (B)	PRE -'90 DOI - NO AUDIT UNIT AUTHORITY
SECTION 9813 (C)	DOI 1/1/90 THROUGH 12/31/93 <ul style="list-style-type: none">• QRR at 90 days TTD
SECTION 9813 (D)	DOI 1/1/94 AND AFTER

90 DAYS TTD

(D)(1)

90 days of aggregate TTD

- within 10 days of 90 days TTD
- Help In Returning to Work '94 brochure

VR - NOPE

(D)(2)

Notice of Potential Medical Eligibility

- within 10 days of a physician's opinion, receipt of a physician's report, or after 365 days of TTD (if no NOPE has previously issued).
- include VR reply form
- include copy of physician's report advising QIW

REMINDER

(D)(3)

Reminder NOPE

- within 45 to 70 days of original NOPE
- send certified as required by LC § 4644 (a)(4)
- include VR reply form

BENEFIT NOTICE REGULATION OVERVIEW

WITHHOLD VR (D)(4)

Notice of Intention to Withhold VRMA

- within 15 days PRIOR to stopping VRMA
- Advise employee
- intention to withhold VRMA
 - reasons for stopping
 - right to object
 - enclose RU-101 and RU-103

SECTION 9814	SALARY CONTINUATION
	<ul style="list-style-type: none">• TD notice requirements -> § 9812 (a) through (d)• with initial notice, include full explanation of salary continuation plan
SECTION 9815	CORRECTED NOTICE
	<ul style="list-style-type: none">• within 14 days after knowledge of error or omission• identify notice as corrected and explain correction

BENEFIT NOTICE REGULATION OVERVIEW

ASSESSMENTS

Exposure for the following violations per notice as provided in Title 8 CCR §10111 and §10111.1.

- **Missing** notices \$100 to \$500 per notice
 - * failure to include a copy of the notice in the claim file
 - * failure to send a copy of the notice to the applicant's representative

- **Late** notices \$25 to \$500 per notice
 - * may be due together with the payment
 - * may be due 5, 10, 14 days after knowledge (exception: Intent to Withhold VRMA due 15 days prior to termination)

- **Inaccurate / incomplete / misleading** \$25 to \$500 per notice
 - * accurate accounting of payments (including broken periods and wage loss periods)
 - * full accounting of 10% self-imposed increase (SII) or other penalties paid
 - * complete remedies / required language
 - * incomplete explanation of action taken
 - * materially misleading denial of all benefits